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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,463	02/19/2004	John Ralph Livingstone	455.01	4849

7590 04/07/2005  
Daniel R. Gropper, PC  
9908 Dale Ridge Ct.  
Vienna, VA 22181

EXAMINER

ARYANPOUR, MITRA

ART UNIT PAPER NUMBER

3711

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/782,463

Applicant(s)

LIVINGSTONE, JOHN RALPH

Examiner

Mitra Aryanpour

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: on page 3, line 16, --to-- should be inserted before “swing”; on page 3, line 24, “and” should be changed to --are-- before “often”; on page 4, line 5, --be-- should be inserted before “likely”; on page 4, line 14, --to-- should be inserted before “move”; on page 5, line 19, “as is it” should be changed to --as it is-- before “a unitary”. Appropriate correction is required for the above objections.

### *Claim Objections*

2. Claim 1 is objected to because of the following informalities: the second occurrence of “d)” has been changed to --e)--. Appropriate correction is required.

3. Claims 8, 9 and 11 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 8, 9 and 11 are intended use and do not further limit the base claim.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker (5,100,134).

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Regarding claim 1, Becker discloses a unitary batting-t adapter comprising: a cylindrical lower base portion (combination of internal bore 7 and lower member 6) having an outside wall, a lower edge, a lower end (portion attached to the base 2), a top end (the portion adjacent friction grip means 8), a lower base narrow section (7), having a first diameter, disposed adjacent said lower end and, an upper neck section (6), having a second diameter, disposed between said lower narrow base section and said top end of said cylindrical base portion;

A circumferential stop ring (friction grip means 8) unitarily connected to said top end of said lower base portion, having a lower neck, an extending arm portion and an upper neck;

A solid upper base portion (upper member 5) having a lower end and an upper end, which is unitarily, connected to said upper neck of said circumferential stop ring;

An upper support portion (ball holder 4), unitarily connected to said upper end of said upper base portion having an outer wall, an inner wall, an inner base and an upper edge which together define an internal aperture; and

An upper flared tip portion (upper surface 12), connected to said upper edge of said upper support portion having an outer wall, an inner wall, a lower edge and an upper edge for supporting a ball.

Regarding claim 3, Becker shows the batting-T adapter is made from a lightweight plastic material. As it is well known plastics, especially lightweight plastics have a degree of flexibility (see column 2, lines 39-42 and lines 67, 68; also column 3, lines 1-7; and column 4, lines 20-29).

Regarding claim 4, Becker shows the batting-t adapter is made from plastic, which is considered equivalent to PVC.

Regarding claim 5, Becker shows the batting-t adapter is made as a unitary article of manufacturer. It should be noted that the broadest reasonable interpretation of unitary would include the assembly of Becker.

Regarding claims 6 and 7, Becker shows the assembly is made of a lightweight plastic material, which is sufficiently strong to withstand the rigours of being struck by a bat under normal game playing conditions. Becker does not disclose expressly if the plastic material used is selected from a material having a relatively high-density material or from a material with a low friction surface. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have selected a specific type of plastic having a relatively high-density or a plastic with low friction surface because Applicant has not disclosed that selecting the aforementioned, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the material taught by Becker or the claimed material(s) because both material perform the same function of withstanding rigorous strikes by a bat. Therefore, it would have been an obvious matter of design choice to modify Becker to obtain the invention as specified in claims 6 and 7.

Regarding claims 8 and 9, Becker shows the components are a slidingly fit connection and can be separated without difficult. Therefore the assembly can also be slidably and frictionally mated with pipe portions or vertical tubes of commonly known batting-t's.

Regarding claim 10, Becker shows the batting-t adapter is made of a light plastic and it is made as a unitary article of manufacturer. It should be noted that the broadest reasonable interpretation of unitary would include the assembly of Becker.

Regarding claim 11, Becker does not provide a travel bag, but teaches that the ball support device is easily assembled and disassembled, and that is relatively compact when disassembled (see column 1, lines 38-48). Official Notice is taken that it would have been obvious to provide a travel bag for the device of Becker, so that when disassembled, the various sections can be easily transported.

Regarding claims 12-22, Becker does not expressly disclose specific dimensions for the various parts of the batting-T adapter or ball support. However, as applicant has admitted the dimensions provided are considered "standard". Therefore it would fit most known batting-Ts. Therefore, the claimed dimensions could also apply to the batting-T adapter of Becker. Official Notice is taken of such.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Becker (5,100,134) in view of Candor et al (3,858,879).

Regarding claim 2, Becker does not show the batting-T to be made of translucent material. Batting-Ts and batting sleeves of various colors are well known in the baseball art; furthermore, there is nothing unobvious about providing a translucent sleeve or adapter. This feature is also shown by Candor et al. Candor et al shows a batting-T that can be made of a variety of material such as cardboard, rubber or other elastomeric material, the batting-T can also be made of a transparent material which allows a ball to be supported thereon and give the illusion that the ball is suspended in mid air. Therefore, in view of the teachings of Candor et al, it would have been obvious to provide a transparent or translucent adapter for the batting-T of Becker as a matter of design preference based upon marketing considerations.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
01 April 2005

  
**MITRA ARYANPOUR  
PRIMARY EXAMINER**